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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1968

No. 1340

In the Matter of:
MELINDA LOU MARKEL

PETITION FOR WRIT OF CERTIORARI

to the Superior Court of the State of California, for the County of Kern, and to the Superior Court of the State of California, for the County of Kern, Juvenile Court

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Subject Index

	Page
Opinions below	2
Jurisdiction	2
Question presented	3
Constitutional and statutory law involved	3
Statement of the case	6
Basis for federal jurisdiction	8
Reasons for granting writ	9
Conclusion	14

Table of Authorities Cited

Cases	Pages
In re Castro, 243 Cal.App.2d 402	9, 12, 13
The Matter of the Application of Gault, 387 U.S. 1, 87 Supreme Court 1420, 18 L. Ed. 2d 527	12, 13

Codes

Health and Safety Code:	
Section 11912	7
Welfare and Institutions Code of the State of California, Division 2, Chapter 2	3, 7, 13
Section 601	7
Section 602	7
Section 630	5, 12
Section 630(a)	5
Section 630(b)	5

Pages

Section 635 5
Section 636 ..... 3, 6, 7
Section 636(a) 4
Section 636(b) 4
Section 636(c) 4
Section 636(d) 4
Section 636(e) 4
Section 636(f) 4
Section 636(g) 4
Section 656 3
Section 731 13

Welfare and Institutions Code of the State of California, Division 2.5, Chapter 1:
Section 1769 13

28 U.S.C.:
Section 1257(3) 2
Section 2101(d) 3, 8

Constitutions

United States Constitution:
Amendment VIII 3, 7, 8, 14
Amendment XIV 3, 8, 14
Section 1 3

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to the Superior Court of the State of California, for the County of Kern, and to the Superior Court of the State of California, for the County of Kern, Juvenile Court

Petitioner, Melinda Lou Markel, respectfully prays for the issuance of a Writ of Certiorari to review the Judgments of the Superior Court of the State of California for the County of Kern, Juvenile Court, rendered March 15, 1968, entered on March 19, 1968, and the decision of the Superior Court of the State of California for the County of Kern, discharging and dismissing a Habeas Corpus Writ entered March 19, 1968, and entered on the same day.

OPINIONS BELOW

The proceedings below were commenced by the filing of a Petition in the Superior Court of the State of California for the County of Kern in the Juvenile Court thereof, being Petition No. 31,730 entitled In the Matter of Melinda Lou Markel, and pursuant thereto a detention hearing was had and your Petitioner was detained in the Juvenile Hall of said Juvenile Court, the records and decisions of which (because they are short) are attached hereto as Appendix A.

A Petitioner for Writ of Habeas Corpus was filed in the Superior Court of the State of California for the County of Kern and a hearing was had on said Writ in an effort to cause the release of your Petitioner after the Order for Detention had been made, and the whole of the record, including the Petition, the Record of Proceedings, and the Decision adverse to Petitioner are attached hereo as Appendix B because the whole of said record is brief.

In both these proceedings your Petitioner asserted a constitutional question under the United States Constitution.

JURISDICTION

The Judgment of the Superior Court of the State of California for the County of Kern on Habeas Corpus discharging the Writ of Petitioner was made March 19, 1968 and entered the same day. The jurisdiction of this Court in invoked under 28 U.S.C. Sections 1257(3) and 2101(d).

QUESTION PRESENTED

1. Whether Section 636 of Division 2, Chapter 2 of the Welfare and Institutions Code of the State of California is unconstitutional under the Eighth and Fourteenth Amendments to the United States Constitution inasmuch as under said Section Petitioner is and was detained without bail pending hearing on a criminal accusation.

CONSTITUTIONAL AND STATUTORY LAW INVOLVED

Constitution of the United States, Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Constitution of the United States, Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Div. 2, Ch. 2, *Welfare and Institutions Code of the State of California,*

Section 656: *Petition; verification; contents.* A petition to commence proceedings in the juvenile

court to declare a minor a ward or a dependent child of the court shall be verified and must contain:

(a) The name of the Court to which the same is addressed.

(b) The title of the proceeding.

(c) The code section or sections and subdivision or subdivisions under which the proceedings are instituted.

(d) The name, age and address, if any, of the minor upon whose behalf the petition is brought.

(e) The name or names and residence address, if known to Petitioner, of all parents and guardians of such minor. If there is no parent or guardian residing within the State, or if his place of residence is not known to Petitioner, the petition must also contain name and residence address, if known, of any adult relative residing within the county, or, if there be none, the adult relative residing nearest to the location of the Court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he is detained in custody, the date and the precise time the minor was taken into custody.

Section 630. *Filing petition; notice of hearing; privilege against self-incrimination; confrontation by and cross-examination of witnesses.*

(a) If the probation officer determines that the minor shall be retained in custody, he shall immediately file a petition pursuant to Section 656 with the clerk of the juvenile court who shall set the matter for hearing on the detention hearing calendar. Immediately upon filing the petition with the clerk of the juvenile court, if the minor is alleged to be a person described in Section 601 or 602, the probation officer shall serve such minor with a copy of the petition and notify him of the time and place of the detention hearing. The probation officer shall thereupon notify a parent or guardian of the minor of the time and place of such hearing. Such notice may be given orally.

(b) In such hearing the minor has a privilege against self-incrimination and has a right to confrontation by, and cross-examination of, witnesses.

Section 635. *Examination of minor; order releasing minor from custody.*

The court will examine such minor, his parent, guardian, or other person having relevant knowledge, hear such relevant evidence as the minor, his parent or guardian or their counsel desires to present, and, unless it appears that such minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another that he be detained or that such minor is likely to flee the

jurisdiction of the court, the court shall make its order releasing such minor from custody.

Section 636. *Order detaining minor in juvenile hall; period of detention.*

If it appears upon the hearing that such minor has violated an order of the juvenile court or has escaped from a commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another that he be detained or that such minor is likely to flee the jurisdiction of the court, the court may make its order that such minor be detained in the juvenile hall or other suitable place designated by the juvenile court for a period not to exceed 15 judicial days and shall enter said order together with its findings of fact in support thereof in the records of the court.

STATEMENT OF THE CASE

This case arises out of a supplemental petition which was filed in the Juvenile Court of the Superior Court of the State of California for the County of Kern, being the Juvenile Court's No. 31,730 which is shown under Appendix A and also as the first page of the Clerk's Transcript of the Juvenile Court proceedings filed herewith. The Petition indicates on its face that the minor, your Petitioner, was taken into custody March 13, 1968 at 7:00 o'clock A.M. The Petition was filed March 14, 1968 as shown by the filing stamp by the said Superior Court. The Petition alleges that your Petitioner, a minor of the age of 16 years, comes

within the provisions of Section 602 of the Welfare and Institutions Code of the State of California, which said section within Division 2, Chapter 2 of the said Welfare and Institutions Code of the State of California, and provides that any person under the age of 21 years who violates any law of this State (California) or of the United States or any ordinance of any city or county of this state defining crime, or who, after having been found by the Juvenile Court to be a person described by Section 601, fails to obey any lawful order of the Juvenile Court, is within the jurisdiction of the Juvenile Court, which may adjudge such person to be a ward of the Court. The petition alleges that your Petitioner violated a law of the State of California, namely a State law prohibiting the selling of a dangerous drug, specifically Section 11912 of the Health and Safety Code of the State of California.

A detention hearing was had on Friday, March 15, 1968 under the provisions of Section 636 of Division 2, Chapter 2, Welfare and Institutions Code of the State of California, being part of the Juvenile Court Law of said State, and pursuant to said hearing, your Petitioner was held without bail pending the hearing upon the merits of the petition itself.

On the same day your Petitioner filed her Petition for Writ of Habeas Corpus in the Superior Court of the State of California for the County of Kern alleging that the restraint of your Petitioner was unconstitutional, and the said Code Section 636 was unconstitutional in that it violated Amendment VIII of the United States Constitution, and therefore that your

Petitioner was illegally held without bail. There were other grounds on the Petition for Writ which are not concerned as part of the constitutional question.

A hearing was had on the Petition for Writ of Habeas Corpus on March 19, 1968, and the Petition for Writ was denied, and your Petitioner was held without bail pending the hearing on the original juvenile court petition on its merits, now set for April 5, 1968. Your Petitioner is still detained.

BASIS FOR FEDERAL JURISDICTION

The jurisdiction of the Supreme Court in this matter is invoked pursuant to 28 U.S.C., Section 1257(3) Sec. 2101(d) to review the judgment of the State Court, in this instance the Superior Court of the State of California for the County of Kern in Habeas Corpus, and the Superior Court of the State of California for the County of Kern, Juvenile Department, on a matter concerning the violation of your Petitioner's constitutional right as guaranteed under the VIII and XIV Amendments to the Constitution of the United States, that the judgments of the trial Courts are a denial of your Petitioner's constitutional rights. The issue involves a substantial Federal question.

REASONS FOR GRANTING WRIT

I.

The case of *In re Castro,* 243 Cal.App.2d, p. 402, an appeal from which was denied by the Supreme Court of the State of California, is the latest expression of the highest Court of California, relative to an interpretation of the Juvenile Court Law. It is stated at page 408 of said decision that,

> "One of the important rights set up in the amendments to the federal Constitution is the right to a jury trial (U.S. Const., Amend. VI); but the law relating to juvenile courts in this state has never provided for a jury trial and none is allowed. (Citing case.) Another right given to persons accused of crime is the right to bail (U.S. Const., Amend. VIII), but bail, as such, is not now provided for in the juvenile court enactment in this state. (Citing case.)"

and again at pages 407, 408 and 409:

> "Notwithstanding the consistent repetition of the holding that a proceeding in the juvenile court is not a criminal trial, there have been indications of uneasiness by the courts for many years that seem at variance with this theory, stressing the constitutional rights of potential wards, which ordinarily are called upon in criminal prosecutions. (Citing cases.)
>
> "In recent times, also, there are increasing indications that this theory of treating juvenile offenders has not always worked out with beneficial results and that there is discontent with the theory and practice of juvenile courts in parts of this country. (Citing cases.)

"As an intermediate appellate court we are bound by the law enunciated by the Supreme Court. (1) For, as is said in *Auto Equity Sales, Inc. v. Superior Court,* 57 Cal.2d 450, 455 (20 Cal.Rptr. 321, 369 P.2d 937): 'Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court.'

"(2) We, therefore, necessarily accept the holding that juvenile court proceedings are not criminal trials and that, as civil proceedings, they are amenable to the law specifically relating to them. (Citing cases.)

"The importance of juvenile court cases is stressed by the fact that during the year 1964-65 juvenile courts throughout California handled 52,089 filings out of a total of 416,292 superior court filings, that is to say one-eighth of all cases filed. Last year, some 49,837 juvenile court cases were disposed of, that being an increase of 4,508 cases over the experience of the previous year.

"One of the important rights set up in the amendments to the federal Constitution is the right to a jury trial (U.S. Const., Amend. VI); but the law relating to juvenile courts in this state has never provided for a jury trial and none is allowed. (Citing case.) Another right given to persons accused of crime is the right to bail (U.S. Const., Amend. VIII), but bail, as such, is not now provided for in the juvenile court enactment in this state. (Citing case.) (3) In criminal cases, proof of guilt must be made beyond all reasonable doubt (Pen. Code, 1096); but in juvenile court the quantum of proof of the facts required to

authorize a finding of wardship need only be a preponderance of the evidence. (Welf. & Inst. Code, Sec. 701.)

"We believe that both theory and practice show that this state cannot logically or practically carry on an effective system which adheres in part to the underlying theory of juvenile courts but, at the same time, requires the strict procedural exercise in detail of all of the constitutional rights accorded to an adult accused of crime. It may be noted in this connection, that if a minor should ask that he be transferred to the adult criminal side of the court (Welf. & Inst. Code, Sec. 606), a juvenile court judge would no doubt honor such a request and transfer the case to the adult criminal court, where the accused juvenile could exercise in detail all of the rights guaranteed by the federal Constitution to one accused of crime, among them being a right to bail, a right to a trial by jury, a right to have his guilt proven to a moral certainty and beyond a reasonable doubt, and a right to exclude all confessions made by him to peace officers in the absence of the preliminary warnings prescribed by the *Escobedo, Dorado* and *Miranda* cases. So far as we are informed, no such request has ever been made by a minor said to have violated a criminal statute; the reason is obvious—the treatment accorded a young person under juvenile court theory and practice is easier on him and more to be welcomed than procedure under the criminal law.

"Our legal system oriented toward civil rights, holds generally that, because of their youth, minors are not fully accountable in contract or in tort; and it seems, therefore, not a little ridicu-

lous to hold that under the *Dorado* rule the state would have to prove initially that the minor involved must have understood constitutional warnings of the peace officers relative to confessions before such confessions would be admissible in evidence. An 8, 9, or 10-year-old boy, or even a minor of an age up to majority, is considered by our civil law as incapable of clearly making a binding contract in the same way as an adult; in tort law there are many situations in which a juvenile is not held to the same standard of care as one who has gained his majority; the necessity of guardianship, in connection with the property rights of minors, illustrates that juveniles are not invariably held to adult standards of understanding and judgment. An unaided minor cannot convey his real property, even though he knowingly wishes to do so. How then can he be expected knowingly and effectively to waive his constitutional rights? If the procedure based on the *Escobedo, Dorado* and *Miranda* cases should be held to apply in all strictness to juveniles and juvenile proceedings in order to exclude confessions made to peace officers, the doctrine of *parens patriae* would become a hollow phrase and the juvenile court simply a young people's criminal court in every situation such as the present."

The *Castro* decision was made prior to the holding of this Court in *The Matter of the Application of Gault*, 387 U.S. 1, 87 Supreme Court, 1420, 18 L. Ed. 2d 527. The Legislature of the State of California then amended the aforesaid section 630 of the Welfare and Institutions Code effective November 8, 1967

to provide for the rights set out in the *Gault* decision in Juvenile Court matters.

The within cause appears to be a similar case to that considered in *Gault*, inasmuch as the provisions of the California Welfare and Institutions Code, Division 2, Chapter 2, Section 731 which reads as follows:

> "*Section 731. Person violating laws; ward of court; commitment to youth authority.* When a minor is adjudged a ward of the court on the ground that he is a person described by Section 602, the Court may order any of the types of treatment referred to in Sections 727 and 730, and as an additional alternative, may commit the minor to the Youth Authority."

and Division 2.5, Chapter 1, Section 1769 which reads as follows:

> "*Section 1769. Discharge of persons committed by juvenile court.* Every person committed to the authority by a juvenile court shall be discharged upon the expiration of a two-year period of control or when the person reaches his 21st birthday, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800)."

provide that your Petitioner could be committed to a State Institution, the California Youth Authority, for a period of two years. For this reason, Petitioner believes that under the reasoning of the *Gault* case and the California *Castro* case that her constitutional rights to due process of law includes the right to bail

under the XIV and VIII Amendments of the Constitution, which right to bail has been denied her.

CONCLUSION

In conclusion, for the reasons above stated, we contend that Petitioner's constitutional right to bail under the Constitution of the United States, was denied her and that she is being detained without due process of law under the provisions of the Constitution of the United States by virtue of the finding of the Trial Courts below and that these Judgments should be reversed.

Dated, Bakersfield, California,
April 8, 1968.

Respectfully submitted,
THOMAS R. DAVIS,
Attorney for Petitioner.

RICHARD HOSKING,
Of Counsel.

(Appendices A and B Follow)